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Harrison & Long and *S. H. Williams*, all of Lynchburg, for plaintiff in error.

John D. Easley, of Lynchburg, and *William Leigh, Jr.*, of Halifax, for defendant in error.

BARNARD *v.* BARNARD.

March 16, 1922.

[111 S. E. 227.]

1. Divorce (§ 184 (10)*)—Great Weight Attached to Finding of Trial Court on Conflicting Testimony Given Orally in Court.—Under Code 1919, § 5109, providing that the court in divorce suit may require the testimony to be given orally in open court, the appellate court will attach great weight to the finding of the trial court on testimony so heard, where conflicting, notwithstanding provision of the statute that such testimony, when certified, shall stand on the same footing as a deposition regularly taken in the cause, in view of the original act (Acts 1914, c. 90).

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 745.]

2. Statutes (§ 147*)—Change in Phraseology in Revision Presumed Not to Change Meaning.—Where there is a material change between the original act and the provisions thereof in the Code, and where other differences in the phraseology between the original act in the Code do not manifest an intent to change the meaning, and there is no revisors' note indicating what, if any, change was intended by the change in the phraseology of the original act, it will be presumed that no change was intended.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 765.]

3. Divorce (§ 240 (4)*)—Allowance of \$100 Alimony Per Month for Support of Wife and Child Held Sufficient.—Where husband was in debt, was a young lawyer with no fixed income or income-producing property, whose income for a year had amounted to \$3,500, but for six months prior to the trial had not exceeded \$100 a month, allowance of \$100 per month to wife, who had been given a divorce, for the the maintenance of herself and child, held sufficient.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 300.]

4. Divorce (§ 298 (1)*)—Welfare of Child of Primary Importance on Question of Custody.—In a divorce case the court, in awarding the custody of a child, will consider the welfare of the child as of primary importance.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 752.]

5. Divorce (§ 298 (1)*)—Decree Giving Father Custody of Child Each Alternate Week Held Proper.—Where the father was as suitable

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and proper a custodian of infant son as the mother, and there was a very warm attachment and unusual devotion between the father and the son, the court, in granting the mother a divorce from the father, did not err in giving the father custody of the child each alternate week.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 752.]

6. Divorce (§ 194*)—Wife Entitled to Counsel Fees and Expenses of Brief on Affirmance of Decree on Husband's Appeal, in Which She Had Assigned Cross-Error as to Portion of Decree Relating to Custody of Child.—On husband's appeal from decree granting wife a divorce, in which the wife assigns as cross-error that portion of decree giving husband the custody of their child each alternate week, the wife on affirmance of the decree will be allowed a reasonable attorney's fee for services of her counsel in the appellate court and the expenses of the preparation and the printing of the counsel's brief.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 754.]

Appeal from Circuit Court, Norfolk County.

Suit by Alice Smith Barnard against W. Frank Barnard. Judgment for plaintiff, and defendant appeals. Affirmed.

Williams, Loyall & Tunstall, of Norfolk, for appellant.

E. R. F. Wells, of Norfolk, for appellee.

ROGERS v. COMMONWEALTH.

March 16, 1922. April 3, 1922.

[111 S. E. 281.]

1. Witnesses (§ 40 (2)*)—Competency of Child Discretionary with Court.—There is no fixed age at which a child must have arrived in order to be competent as a witness; the question being discretionary with the trial court.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 913.]

2. Criminal Law (§ 1153 (2)*)—Trial Court's Determination as to Competency of Small Child Not Disturbed Except for Manifest Error.—Trial court's determination as to competency of child as a witness will not be disturbed on appeal except for manifest error.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 913.]

3. Witnesses (§ 40 (1)*)—That Child Is Too Young to Be Convicted of Perjury Is Not Decisive of Its Competency.—That a child may be too young to be convicted of perjury is not decisive of its competency as a witness.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 913.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.